

FILED

Jul 27 2022

Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RHONDA FLEMING

Petitioner,

v.

WARDEN JUSINO,

Respondent.

Case No. 22-cv-04195 NC (PR)

ORDER OF TRANSFER

This federal habeas action, in which petitioner is challenging “the validity of [her] conviction or sentence,” Dkt. No. 1 at 2, is TRANSFERRED to the United States District Court for the Southern District of Texas, as that is the district of conviction. *See* 28 U.S.C. §§ 1404(a), 2241(d); Habeas L.R. 2254-3(b).

Under limited circumstances, a prisoner may use 28 U.S.C. § 2241 to collaterally attack a conviction or sentence. *See* 28 U.S.C. § 2255(e) (known as the “escape hatch” provision). However, this “escape hatch” only applies when the prisoner “(1) makes a claim of actual innocence, and (2) has not had an unobstructed procedural shot at presenting that claim.” *Marrero v. Ives*, 682 F.3d 1190, 1192 (9th Cir. 2012).

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2 Here, petitioner argues not that she needs to proceed under the “escape hatch,” but
3 rather that her conviction is unconstitutional based on an intervening change in the law.
4 *See* Pet. at 2. Accordingly, the instant petition properly should be filed before the United
5 States District Court for the Southern District of Texas, and/or the United States Court of
6 Appeals for the Fifth Circuit. *See* 28 U.S.C. § 2255(h)(2) (providing that a petitioner may
7 seek permission from “the appropriate court of appeals” to file “[a] second or successive
8 motion” for relief from conviction, based on “a new rule of constitutional law, made
9 retroactive to cases on collateral review by the Supreme Court, that was previously
10 unavailable”).

11 The Clerk is directed to transfer this matter forthwith.

12 **IT IS SO ORDERED.**

13 DATED: July 27, 2022

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15 NATHANAEL M. COUSINS
16 United States Magistrate Judge
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